Supreme Court, U.S.
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OFFICE OF THE CLERK

No.

In The

Supreme Court of the United States

Dennis Balanay
Defendant - Appellant

Petitioner,

v.

State of Hawaii
Plaintiff - Appellee

Respondent.

On the petition for Writ
of Certiorari to the court
whose judgement you seek to review
Hawaii's in the intermediate court of appeal
May 3, 1999 within case no. 21208
ORDER-DENYING-FOR-RECONSIDERATION.
SEE Appendix (A)

PETITION-FOR-WRIT-OF-CERTIORARI

PRO, SE
Dennis Balanay
P.O. Box 357
Haleiwa, Hawaii 96712
Telephone: 637-9254
(Petitioner)

27 pp

Rule 14.
Content of petition of writ of Certiorari

Rule 14(1) (a)
The Question presented for review

1.

Within the trial week of about July 21, 1997 through July 24, 1997 within Cr. no. 95-2104 consolidated with Cr. no. 96-2065 (plaintiff) - State of Hawaii vs. (defendant) - Dennis Balanay, Honolulu, in the circuit of the first circuit court, Honolulu trial judge Mr. Herbert Shimabukuro violated the United State of America constitution, 14. Amendment.

> nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within jurisdiction the equal protection of the law.

Honolulu trial judge Mr. Herbert Shimabukuro did not instruct the jury with Hawaii revised statute, H.R.S. section 657-31 ten years which was amended in 1973 which says, Hawaii revised statutes H.R.S. section 657-31 twenty years, petitioner, appellant, defendant Dennis Balanay is entitled to jury instruction with Hawaii revised statute H.R.S. section 657-31 ten years which says:

> no person shall commence an action to recover possession of any lands, or make entry thereon, unless within twenty years after the right to bring action first occurred.

2.

(Apponent) appellee, plaintiff - State of Hawaii's prosecuting attorney Ms. Sherri Chun did not present, at trial, any rebuttal eye witnesses, any rebuttal evidence against petitioner, defendant Dennis Balanay. At trial defendant Dennis Balanay raised his defense and claimed adverse possession to tax Map key 1-6-6-01-(3) parcel within Haleiwa, Hawaii 96712, in the State of Hawaii, in the Hawaiian island of Oahu.

Under Hawaii revised statutes H.R.S. section 657-31 ten years, petitioner, appellant defendant Dennis Balanay has legal adverse of possession property title to Tax map key (1) represent the island of Oahu, (1)-6-6-01- parcel 03 within Haleiwa, Hawaii 96712.

Rule 14(1) (a)

The Question presented for review

3.

Under Hawaii revised statutes, H.R.S. section 657-31 ten years, Honolulu, in the circuit of the first circuit court, trial judge Mr. Herbert Shimabukuro has no legal jurisdiction to trial cr.no. 95-2104 consolidated with cr. no. 96-2065 (plaintiff) - State of Hawaii vs. (defendant) Dennis Balanay.

Petitioner, appellant, defendant Dennis Balanay parents Bonifacio Balanay Sr. (father) and Sophie Balanay (mother) bought tax map key (1) 6-6-01-06 parcel in the year of about 1965.

The Balanays of tax map key (1) 6-6-01-06 parcel walked across, drove their car across, tax map key (1) 6-6-03 parcel for about 30 year.

No one has taken the Balanays to court for crossing over tax map key (1) 6-6-01-03 parcel within Haleiwa Hawaii 96712 therefore Balanays have completed Hawaii statute of limitation time period of Hawaii revised statutes H.R.S. 657-31 ten years.

4.

Under Hawaii revised statutes H.R.S. section 657-31 ten years, Honolulu judge Mr. Herbert Shimabukuro is too late to bring any court action against petitioner, defendant appellant Dennis Balanay, cr. no. 95-2104 consolidated with cr. no. 96-2065.

Also supreme court in the State of Hawaii case no. 21208 is too late to bring any court action against petitioner, appellant, defendant Dennis Balanay.

Rule 14(1) (b)

A list of all parties to this proceeding in the court whose judgement is sought to be reviewed.

(1) Petitioner Dennis Balanay wants this court to review Honolulu first circuit trial judge Mr. Herbert Shimabukuro entire trial court proceeding within the trial week of about July 21, 1997 through July 24, 1997 within court issue of cr. no. 95--2104 consolidated with cr. no. 96-2065.

(2) Petitioner, defendant, appellant Dennis Balanay wants this court to review First circuit judge Herbert Shimabukuro, December 4, 1997, court order sentence date of petitioner Dennis Balanay. Dennis Balanay was found guilty on the trial week of July 21, 1997 through July 24, 1997 within cr. no. 95-2104 consolidated with cr. no. 96-2065.

(3) Petitioner appellant, defendant Dennis Balanay wants this court to review the entire court issue-court proceeding within the Supreme Court of the State of Hawaii within case no. 21208.

(4) Under Hawaii revised statutes H.R.S. section 657-31 ten years, first circuit court Honolulu judge Mr. Herbert Shimabukuro within cr. no. 95-2104 consolidated with cr. no. 96-2065 is to late to bring this court action against petitioner Dennis Balanay because petitioner has completed the time period of the ten year and twenty year statute of limitations.

(5) Under Hawaii revised statutes H.R.S. section 657-31 in the Supreme court in the State of Hawaii, Honolulu appellate court has no legal jurisdiction within this court proceeding-court issue within case no. 21208, because under H.R.S. section 657-31 ten years Honolulu appellate court did not bring this court issue on time. Petitioner Dennis Balanay walked across, drove across tax map key (1)-6-6-01-03 parcel for about 29 years. No one arrested Dennis Balanay, no one has taken Dennis Balanay to court since 1965 through 1994. Therefore plaintiff State of Hawaii is too late to commence any legal court proceeding.

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Rule 14 (1) (c)

If the petition exceeds five pages, a table of contents and a table of cited authorities.

(a.) Petitioner, appellant, defendant Dennis Balanay will inform this court that a table of contents and a table of cited authorities, will be attached onto this petition for writ of certiorari, because this petition for writ of certiorari will exceed more than five pages.

Rule 14 (1) (d)

Citation of official and unofficial reports of the opinions and orders entered in the case by courts or administrative agencies.

(a.) The opinions of the appellate court of the State of Hawaii in the Supreme Court of the State of Hawaii on about May 3, 1999 within case no. 21208, Hawaii Supreme Court order deny for reconsideration on May 3, 1999 Hawaii Supreme Court deny petition appellant, defendant Dennis Balanay motion for reconsideration. With specific portions of the record or summary thereof, with specific reference to the place in the record where the matter appears will this court read into court document filed May 3, 1999 within the supreme court in the State of Hawaii within case no. 21208. See Appendix (B) Page 2a, also will this court read into case no: 21208 Intermediate Court of Appeals in the State of Hawaii's Memorandum Opinion filed April 12, 1999 by refernece to the records, will this court read in to Appendix (C) page 4a, through Joint Appendix volume 1, page 17a, for Memorandum Opinion filed April 12, 1999 which is attached to this court document.

Rule 14 (1) (e) (i)

A concise statement of the basis for jurisdiction in this court showing.

(i.) The date the judgement or order sought to be reviewed petitioner, appellant defendant Dennis Balanay wants this court; the Supreme Court of the United States to review, petitioner Dennis Balanay court order May 3, 1999. Also will this court read into case no.: 21208 Intermediate Court of Appeals of the State of Hawaii's Memorandum Opinion, by reference to the record, will this court read into Appendix (C) pages 4a through 17a which are attached to this court document.

Order DENY MOTION FOR RECONSIDERATION which was

filed within case no. 21208 within the intermediate court of appeal in the State of Hawaii, with specific reference to the place in the record where the matter appears. Will this court see and read into Appendix (B) Page 2a for May 3, 1999 order to deny Motion for reconsideration. The petition for writ is filed within 90 days. Also see Appendix (B) pg. a3 & Appendix (C) pg. a5.

Rule 14 (e) (ii)

The date of any order respecting rehearing, and the date and terms of any order granting an extension of time to file the petition for writ of certiorari.

Petitioner appellant, defendant Dennis Balanay will inform this court that petitioner postmarked his petition for writ of certiorari within the Supreme Court of the United States on this date of July 30, 1999.

Will this court see and read into Appendix (I) Page 32a. Appendix (I) is a letter which clerk of the court William K. Suter is asking petitioner to make all corrections within postmarked petition for writ of certiorari.

Rule 14 (e) (iii)

Express reliance on rule 12.5, when a cross-petition for writ of certiorari is filed under that rule, and the date of the docketing of the petition for writ of certiorari in connection with which the cross-petition is filed:

(1) Petitioner appellant defendant Dennis Balanay has not docketed his petition for writ of certiorari. Will this court read into Appendix (A), Appendix (B) and Appendix (C) which is attached onto this document.

Rule 14 (e) (iv)

The statutory provision believed to confer on this court jurisdiction to review on a writ of certiorari the judgement or question and;

(1) Apponent appellee, plaintiff State of Hawaii is too late to recover tax map key (1)-6-6-01-03 parcel. Plaintiff State of Hawaii cannot bring any legal court proceeding against property tax map key (1)-6-6-01-03 parcel within Haleiwa Hawaii 96712. Under Hawaii revised statute H.R.S. section 657-31 ten years petitioner Dennis Balanay has adverse possession legal property title to tax map key (1)-6-6-01-03 parcel within Haleiwa, Hawaii 96712.

Rule 14 (1) (e) (v)

If applicable, a statement that the notification required by rule 29.4(b) or (c) has been made.

(1) Petitioner Dennis Balanay has not made any contact with any attorney general in regard to petitioner, petition writ for certiorari within this case.

Rule 14 (1.)- (f)

The constitutional provisions, treaties, statues, ordinances and regulations involved in this case.

Petitioner Dennis Balanay will inform this court that the constitutional provision involved in this case is the United States of America constitution 14. amendment when Honolulu trial judge Herbert Shimabukuro did not properly instruct the jury with Hawaii's revised statutes sec. 657-31 ten years also HRS 657-31 twenty years for the defendant Dennis Balanay.

Dennis Balanay believes that his civil right to the United States constitution 14. amendment "equal protection of the law"-was denied by Honolulu judge Herbert Shimabukuro when Judge Shimabukuro did not properly instruct jury, with H.R.S. 657-31 ten years within the trial week of July 21, 1997 through July 24, 1997 within the trial and court proceeding of cr. no. 95-2104 and cr. no. 96-2065.

Rule 14 (1.)-(g)-(i)

When the federal Question sought to be reviewed were raised, the method or manner of raising them and the way in which they were passed on by those court.

On October 8, 1997 and on December 4, 1997 within cr. no. 95-2104 and within cr. no. 96-2065 defendant Dennis Balanay filed a court document with actual transcripts of trial week of July 21-24, 1997; within exhibit (B)page 32 is evidence that the court Judge Herbert Shimabukuro took judicial notice of Hawaii Revised statutes sec. 657-31 ten years while defendant Dennis Balanay was being direct examination by his public defender attorney Neil N. Murakami during the trial date of July 22, 1997. Later during the trial, Judge Shimabukuro did not instruct the jury with H.R.S. 657-31 ten years. Read entire court transcript.

Rule 14 (1) (g) (i)

When the federal questions sought to be reviewed were raised, the method or manner of raising them and the way in which they were passed on by those court.

Petitioner, appellant defendant Dennis Balanay will inform this court that under rule 1 (g) (i) under Hawaii revised statutes H.R.S. section 657-31 ten years-same/same seven legislature act 27 section H.R.S 657-31 is amended to read as followed May 8, 1973 H.R.S section 657-31 ten years in amended to H.R.S section 657-31 twenty years. Read as follows:

No person shall commence an action to recover possession of any lands, or make entry thereon, unless within twenty years after the right to bring the action first occurred. Petitioner, appellant, defendant Dennis Balanay will inform this court.

Within cr.no. 95-2104 consolidated with cr.no. 96-2065 during the trial week of about July 21, 1997 through July 24, 1997, Honolulu trial judge Herbert Shimabukuro took judicial notice of petitioner Dennis Balanay defense at trial,. Dennis Balanay defense was Hawaii revised statutes, H.R.S. 657-31 ten years, Dennis Balanay told Honolulu trial Judge Shimabukuro and the jury that Dennis Balanay has a legal adverse of possession property title to tax map key (1)-6-6-01-03 parcel within Haleiwa, Hawaii 96712. Will this court read into court document with specific reference to the place in the record where the matter appears-cr.no.95-2104 consolidated with cr.no. 96-2065 court document filed on about October 8, 1997 and December 4, 1997 within trial judge Herbert K. Shimabukuro took judicial notice of Hawaii revised statutes H.R.S. section 657-31 ten years.

> No person shall commence an action to recover possession of any lands , or make entry thereon, unless within twenty years after the right to bring the action first occurred. October 8, 1997 court document is an actual copy – July 23, 1997 court transcript of Dennis Balanay Testimony during the trial week of July 21, 1997 through July 24, 1997 within cr. No. 95-2104 consolidate with cr. No. 96-2065.

Within July 23, 1997 court document filed into cr.no. 95-2104 consolidate with cr. No. 96-2065 on this date July 23, 1997 (within specific reference to the places in the record where the matter appears). Honolulu trial judge Mr. Herbert K. Shimabukuro prepared a court proposed jury instruction of about page 1 through page 31. Honolulu trial judge herbert K. Shimabukuro proposed court instruction excluded Hawaii revised statutes H.R.S. section 657-31 ten years which says:

> No person shall commence an action to recover possession of any land or make entry thereon,

unless within twenty years after the right to bring action first occurred.

Also, case note 48 Hawaii 17 **Deponte vs. Ulupalakua Ranch**. Honolulu trial judge Mr. Herbert K. Shimabukuro violated the United States constitution of America 14 Amendment. Judge Herbert Shimabukuro denied equal protection on the law against defendant Dennis Balanay when judge Shimabukuro excluded H.R.S. section 657-31 ten years out of his proposed jury instruction on the date of about July 23, 1997, within cr. No. 95-2104 and cr. No. 96-2065.

Balanay has adverse possession, H.R.S. section 657-31, Hawaii revised statutes 657-31 adverse possession property legal title to tax map key (1)-6-6-01-03 property within Haleiwa, Hawaii 96712.

Balanay had the basic element electric power lines and water lines which crossed over and on top of tax map key (1) 6-6-01-03 parcel which connected into Balanay's property tax map key (1)-6-6-01-06 parcel since 1965 through 1999 for about 35 years. Petitioner Dennis Balanay wants this court – the Supreme Court of the United States to read into the entire court Document of March 21, 1996 which was filed within cr. No. 95-2104 court proceeding. Also entire court transcript documents filed Oct. 8, 1997 and Dec. 4, 1997.

Petitioner Dennis Balanay wants this court to consider all court documents filed within this action – court action cr.no. 95-2104 consolidated with cr. No. 96-2065 later appeal into case no. 21208 to become all part to this petition writ of certiorari. Will this court take notice that within the court document filed march 21, 1996 within exhibit (f) eye witness Dereck Ke'a written testimony will reveal to this court that the Balanay's drove across and walked across tax map key (1)-6-6-01-03 parcel since the year of 1965 until about 1994. Also Ke'a testified at trial read into actual court transcript filed on Oct. 8, 1997 and Dec. 4, 1997

Rule 14 (1.)-(h)

A direct and concise argument amplifying the reason relied on for the allowance of the writ.

i. Under case note 3 Haw App 14 **Campbell v. Hipawai Corporation**; the function served by the jury instruction is to inform the jury of the law applicable to the current case.

Also, Hawaii's Adverse Possession law HRS-section 657-31 ten years act 26 section 6 however that this act does not affect rights and duties that matured, penalties that were incurred and proceeding that were begun before the effective date on May 4, 1973.

Will this court read into petitioner Balanay's opening brief filed February 25, 1998 within Hawaii's intermediate court of appeal of the State of Hawaii with case no. 21208

Under case note 48 Haw 21 **Deponte v. Ulupalakua Ranch**, ordinarily it is within the province of the jury to determine from conflicting or doubtful adverse possession, but here, as in this case, the evidence as to the facts necessary to constitute such possession for the statutory period is clear and undisputed and susceptible and but one inference, it becomes one law for the court.

State of Hawaii's prosecuting attorney Ms. Sherri Chun did not present any rebuttal evidence against defendant Dennis Balanay when Balanay claimed adverse possession property title to tax map key 1-6-6-01-03, therefore under Hawaii Revised Statutes section 657-31 ten years Petitioner Dennis Balanay is entitled to a jury instruction that should include HRS-657-31 during the trial week of July 21-24, 1997 within cr. no. 95-2104 and cr. no. 96-2065.

Also, will this court read into court document filed on March 21, 1996 within cr. no. 95-2104 also will this court read into court documents filed on October 8, 1997 within cr. no. 96-2065. Also December 4, 1997 **Waianae Co. vs. Kaiwilei** 24 Haw. 1.

The whole doctrine of prescription is founded upon public policy. It is a matter of public interest that title to property should not long remain uncertain and in dispute. The doctrine of prescription contributes in that respect to the interest of society, and at the same time promotes private justice, putting an end to and fixing a limit to contention or strife.

Protest and denials, and mere denials of right are evidence the right is in dispute and distinguished from a contested title, if such protest and denials, unaccompanied and is actionable as such, be permitted to put a right in abeyance the policy of the law will be defeated and prescriptive rights will be placed upon the most unstable of foundation.

By adverse possession of land for the statutory period of limitation the adverse holder acquires a title in fee simple which is a perfect as a title by deed, its legal effect is not only to bar the remedy of the owner of the paper title, but to divest his estate and vest it in the party holding adversely for the required period of time. See **Waianae Co. vs. Kaiwilei**, 24 Haw. 1.

Petitioner Dennis Balanay will inform this court to read into cr.no. 95-2104 and cr.no. 96-2065 court documents filed on the date of March 21, 1996 which is filed within in the circuit of the first circuit court in Honolulu in the State of Hawaii. Also will this court read into the entire court documents filed within the Supreme Court of the State of Hawaii

within case no. 21208. "Dennis Balanay is entitled to the allowance of the writ of certiorari's writ."

Within case note **State vs. Maelega** 178.179

> "A defendant is entitled to an instruction on every defense or theory of defense having any support in the evidence. Provided such evidence would support the consideration of that issue by the jury, no matter how weak, inconclusive or unsatisfactory the evidence may be."

Will this court read into the entire court documents filed on the date of March 21, 1996 within cr.no. 95-2104. Also, the entire court documents within the Supreme court of the State of Hawaii under case no. 21208 within Feb. 25, 1998.

United States Code annotated,
Title 28, Judicial and Judicial procedure, section 1251 to 1331

28 section 1257 Supreme Court – Jurisdiction Part 4
Commentary on 1988 Revision
by David D. Siegel

Ch. 81 State Courts 28 section 1257

> Note that the section allows certiorari to review not just a decision of the "highest court" of a state, but of the highest state court "in which a decision could be had." That language, contained in the old section and repeated in the new, takes note of the internal strictures a state may impose on appeals within its own court system, perhaps stopping a case at some lower level and barring it from review by the state's highest court, or, for that matter, from any appellate court at all. If that case nevertheless poses a federal question, review of it can be applied for the U.S. Supreme Court – solely by the certiorari route, of course – from whatever court is has been able to reach within the state system.

Rule 14 (1)-(h)

The reason relied on for the allowance of the writ.

However, Honolulu trial judge Herbert Shimabukuro denied to properly instruct the jury with HRS-sec 657-31 ten years for the defendant Dennis Balanay within the trial week of July 21-24, 1997 within cr. no. 95-2104 and cr. no. 96-2065. Will this court read into Oct. 8, 1997 and Dec. 4, 1997 court documents

Because judge Herbert Shimabukuro did not instruct the jury with HRS 657-31 ten years for the defendant Dennis Balanay. Honolulu Judge Shimabukuro violated Dennis Balanay's civil right to the United States constitution 14. amendment "due process of law and equal protection of the law." For proof that Honolulu Judge Shimabukuro denied to instruct the jury with HRS-sec 657-31 ten years; will Supreme Court of the United States read into court document filed on Oct. 8, 1997 and Dec. 4, 1997 within cr. no. 95-2104 and cr. no. 96-2065 within the circuit of the first circuit court within the State of Hawaii, Honolulu, Oahu.

Will this court read into October 8, 1997 court document file within cr.no. 95-2104 consolidated with cr.no. 96-2065. October 8, 1997 is actual court transcripts of trial week July 21-24, 1997. Within court transcript of October 8, 1997, this court will be informed within page 27 through page 69, is defendant Dennis Balanay's trial testimony- trial defense. In which defendant claims adverse possession to tax map key (1)-6-6-01-03 parcel property with in Haleiwa, Hawaii 96712

Rule 14 (1.) (h) (ii)

Allowance of the writ

(ii) Lower court within cr. no. 95-2104 and cr. no. 96-2065 within the trial week of July 21-24, 1997 Honolulu trail Judge Herbert Shimabukuro has no legal jurisdiction to trial the above court preceding, because under Hawaii's Revised Statutes section 657-31 ten years which says, no person shall commence an action to recover possession of any lands, unless within twenty years after the right to bring the action first occurred.

The State of Hawaii had to bring this court proceeding within HRS-sec 657-31 statutory of limitation time period twenty years.

Bonifacio Balanay Sr. and Sophie are the parents of the petitioner Dennis Balanay; Bonifacio and Sophie bought Tax map Key 1-6-6-01-06 in the year of February 1, 1965 and began driving, walking, across Tax Map Key 1-6-6-01-03 since 1965 until 1999 that about 39 years of cross-

ing over Tax Map Key 1-6-6-01-03 parcel within Haleiwa, Hawaii 96712.

The State of Hawaii brought petitioner Dennis Balanay into court into the year of about 1995 under case no. 95-2104. State of Hawaii is about 10 years too late to commence legal action against Dennis Balanay of Tax Map Key 1-6-6-01-06 for proof of adverse possession claim to Tax Map Key 1-6-6-01-03 will this Supreme Court of the United States read into Dennis Balanay entire court documents of 95-2104 and 96-2065

Also, will this court read into court document filed on March 21, 1996 within cr. no. 95-2104 see exhibit (c)-p1-p8 for proof of property deed which petitioner Dennis Balanay owns Tax Map Key 1-6-6-01-06. Also see exhibit (i) p1-p7 Hawaiian Electric pole easement which connect to petitioner Balanay property since 1965. Also, see exhibit (i) p8 will prove that petitioner received Honolulu Board of Water Supply since 1965.

(iii) Name of the issue of the court.

Will this court see Appendix (A). Also, read into entire court document within cr.no. 95-2104 consolidated with 96-2065, also, Supreme Court of the State of Hawaii case no. 21208.

Rule (1) (h) (iv)

Judgement sought to be reviewed. Petitioner Balanay will inform this court that petitioner is asking this court to review petitioner's petition for writ of certiorari under Hawaii revised statutes, H.R.S. section 657-31 ten years. Also, under United States Code 28 Section 1257, Supreme Court – Jurisdiction, part 4 commentary on 1988 Revision by David D. Siegel, Chapter 81 State Court, 28 Section 1257.

United States Code annotated,
Title 28, Judicial and Judicial procedure, section 1251 to 1331

28 section 1257 Supreme Court – Jurisdiction Part 4
Commentary on 1988 Revision
by David D. Siegel

Ch. 81 State Courts 28 section 1257

Note that the section allows certiorari to review not just a decision of the "highest court" of a state, but of the highest state court "in which a decision could be had." That language, contained in the old section and

repeated in the new, takes note of the internal strictures a state may impose on appeals within its own court system, perhaps stopping a case at some lower level and barring it from review by the state's highest court, or, for that matter, from any appellate court at all. If that case nevertheless poses a federal question, review of it can be applied for the U.S. Supreme Court – solely by the certiorari route, of course – from whatever court is has been able to reach within the state system. Will this court also read into Appendix (A) page 31 (A) to 36 (A) of U.S.C.A. Title 28 Section 1257.

Rule 1(h) (v)
Material required by subparagraphs 1(a) or 1(g)(i).

To understand this petition for writ of certiorari, this court, the Supreme Court of the United States has to read into entire court documents filed within cr.no. 95-2104 consolidated with cr.no. 96-2065 (plaintiff) State of Hawaii vs. (defendant) Dennis Balanay, all court documents and all court material is located inside of Hawaii, in the circuit of the first circuit court, within the State of Hawaii within the Hawaiian Island of Oahu in Honolulu.

Also, cr.no. 95-2104 and cr.no. 96-2065 was appealed into the Supreme Court of the State of Hawaii under case no. 21208. Therefore, petitioner Dennis Balanay is asking this court to consider all court materials and every court document filed within cr.no. 95-2104 and cr.no. 96-2065 and case no. 21208 to be parts of this petition for writ of certiorari within this court, the Supreme Court of the United States and Rule 1(h)(vi) any other material petitioner believes essential to understand the petition.

Petitioner will inform this court that every statement which is mentioned within the above Rule 1(h)(v) is to be a part of the question within Rule 1 (h)(vi). But for a more specific portion of the court records petitioner wants this court to consider seeing court documents filed March 21, 1996 within cr.no. 95-2104 which will reveal to the court, an actual photograph of the roadway across the tax map key (1)-6-6-01-03 parcel. See exhibit (A), (B), (C), and all other exhibits attached to March 21, 1996 court documents for an actual photograph of the existing roadway across Tax Map Key 1-6-6-03. Also will this court read into July 21-24, 1999 trial week actual court transcript within court documents filed Oct.

8, 1997 and Dec. 4, 1997 and Feb. 25, 1998.
Also will this court read the entire court document filed Feb 25, 1997 within Hawaii Supreme Court under case no.: 21208. Also will see page 28a, 29a and 30a are photos of roadway existing across TMK 1-6-6-01 parcel (3).

Summary

During the trial week July 21, 1997 through July 22, 1997 within cr.no. 95-2104 consolidated with cr.no. 96-2065 defendant Dennis Balanay was entitled to a jury instruction. At trial, defendant Dennis Balanay raised his defense and said that under Hawaii revised statutes H.R.S. section 657-31 ten years which says:

No person shall commence an action to recover possessions of any lands, or make any entry thereon unless within twenty years after the right to bring the action first occurred. Also, defendant Dennis Balanay raised his defense at trial that under H.R.S. section 657-31 ten years defendant Dennis Balanay has a legal prescription property title, adverse of possession property title to tax map key (1)-6-6-01-03 parcel within Haleiwa, Hawaii 96712 within the Hawaiian Island of Oahu.

State of Hawaii prosecuting Attorney Ms. Sherri Chun did not produce at trial a rebuttal eye witness who could come into court and say that Balanay is not adverse of possession to tax map key (1)-6-6-01-03 parcel. Because the court issue was undisputed, plaintiff's State of Hawaii did not present rebuttal eye witness against defendant Dennis Balanay trial defense which he said at trial I Dennis Balanay has legal property deed, legal adverse of possession title deed to tax map key (1)-6-6-01-03 parcel within Haleiwa, Hawaii. See entire court document filed October 8, 1997 and December 4, 1997 and Feb. 24, 1997.

Also, under H.R.S. 657-31 ten years case note: Ordinarily it is within the province of the jury to determine from conflicting or doubtful adverse possession, but here as in this case, the evidence as to the facts necessary to constitute such possession for statutory period is clean and undisputed and susceptible and but one inference, it becomes one law for the court. 48 HAW.21 **Deponte vs. Ulupalakua Ranch.**

Also, under H.R.S. 657-31 ten years and under case note: **Waianae Co. vs. Kaiwilei** 24 Haw. 1. Because petitioner, appellant, defendant Dennis Balanay trial defense was Hawaii revised statutes H.R.S. section 657-31 ten years and defendant Dennis Balanay presented Photographs of road

way existing across tax map key (1)-6-6-01-03 as evidence exhibit (e) (f) (g) (h) during the trial week of July 21 through 24, 1997 within cr.no. 95-2104 consolidated with cr.no. 96-2065 and that since 1965 through 1994 a road existed across Tax map key (1)-6-6-01-03 also that defendant Dennis Balanay's parents, brothers, sisters drove and walked across roadway across tax map key (1)-6-6-01-03 parcel within Haleiwa Hawaii 96712. Automatically under H.R.S. 657-31 defendant Dennis Balanay has a property deed adverse of possession title to tax map key (1)-6-6-01-03 property within Haleiwa, Hawaii 96712. This petition for writ of certiorari should be granted to petitioner, appellant, defendant Dennis Balanay because the Hawaii Lower State Court and Hawaii's appellate-Hawaii Supreme court has denied to protect defendant Dennis Balanay with Hawaii revised statute H.R.S. section 657-31 ten years. Therefore, petitioner, appellant, defendant Dennis Balanay is asking the United States Supreme Court of the United States to review the entire case of cr.no. 95-2104 consolidated with cr.no. 96-2065 which it was appeal into the Supreme Court of the State of hawaii under case no. 21208.

For actual photographs of roadway across tax map key 1-6-6-01-03, will this court read into entire court document filed February 25, 1998 within cr.no. 21208 also will this court read entire court documents filed March 21, 1996 within cr.no. 95-2104 also will this court read into court documents filed October 10, 1997 and December 4, 1997 and February 25, 1998. The above court documents will reveal into this court actual court transcript of Dennis Balanay's testimony at trial on July 21-24, 1996 within cr.no. 95-2104 consolidated cr.no. 96-2065 appeal into case no. 21-208. Also will this court see and read into Joint Appendix volume 1, which is attached to this court document, see Joint Appendix volume 1, pages 28a-30a. Pages 28a-30a are actual photos of roadway across TMK 1-6-6-01-03 since the years of 1965 until this year 2000.
Also will this court take notice that Hawaiian Electric Company installed High Voltage electric poles across TMK 1-6-6-01-03 will this court see and read into Joint Appendix page 26a, electric poles installed May 7, 1966 also page 24a is Balanay's property deed to TMK 1-6-6-01-06, also 27a Balanay of TMK 1-6-6-01-06 laid their water pipes of about 280 feet in length across TMK 1-6-6-01-03 since 1967 until the year 2000. Will this court read into page 27a of this court document

Appendices (A), (B), (C), (D), (E) and page 36 (A) are to inform this court that Dennis Balanay petition for writ is filed on time also all correction is filed on time under common law 28 U.S.C.A. 1257.

Summary

Also under the statutes of (U.S.C.A.) United States Code Annotated Title 28 Section 1257, for a copy of U.S.C.A. 28 Sec. 1257 will this court read into Appendix (A) page 31 (A) to Page 36 (A), under 28 U.S.C.A. Section 1257 Petitioner Dennis Balanay is entitled to a judiciary and judicial review by the Supreme Court of the United States located in Washington D.C. 20543-0001.

Conclusion

Under United States Code Annotated (U.S.C.A.) Title 28 Section 1257, petitioner Dennis Balanay is entitled to a complete judiciary and a complete judicial review of Dennis Balanay's petition for Writ of Certiorari by the Supreme Court of the United States located in Washington D.C. 20543-0001.

Respectfully submitted

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(Petitioner)

Counsel of Record
Andrea T.Y. Low
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(Respondent)

Acknowledgment

This petition for writ of certiorari will be signed by the petitioner Dennis Balanay on this date of **May, 2000**

Signed by: Dennis Balanay — May 12, 2000

Dennis Balanay — On this date

APPENDIX A - ORDER

NO. 21208
IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I Respondent-Appellee,	)	CR. NOS. 95-2104 and 96-2065
v.	)	
DENNIS BALANAY, Petitioner-Appellant	)	

FILED
MAY 24 1 02 PM '99
EUGENE H. SADAO
CLERK SUPREME COURT

ORDER

Petitioner Dennis Balanay's Application for Writ of Certiorari filed on May 12, 1999 is hereby denied.

DATED: Honolulu, Hawai'i, May 24, 1999.

FOR THE COURT:

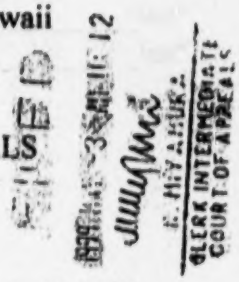
Chief Justice

Theodore Y. H. Chinn, Deputy
Public Defender and
Jon N. Ikenaga, Deputy
Public Defender
for the writ

APPENDIX B - ORDER DENYING MOTION FOR RECONSIDERATION

Honolulu, Hawaii May 3, 1999 within the
Intermediate Court of Appeals of the State of Hawaii

NOS. 21203 AND 21399



IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

STATE OF HAWAI'I	)	CR. NOS. 96-2065 & 95-2104
Plaintiff-Appellee,	)	
v.	)	APPEAL FROM
DENNIS BALANAY,	)	FIRST CIRCUIT COURT
Defendant-Appellant)		

ORDER DENYING MOTION FOR RECONSIDERATION

Upon consideration of the motion for reconsideration filed on April 22, 1999, it appears that the motion was filed *pro se* by Defendant-Appellant Dennis Balanay, who is represented by legal counsel. Defendant-Appellant does not have a constitutional "right to hybrid representation. Such representation is in the discretion of the trial court." State v. Hirano, 8 Haw. App. 880, 886, 802 P.2d 8482, 485 (1990), cert. denied. Assuming such representation is also in the discretion of the appellate court,

IT IS HEREBY ORDERED that the motion is denied the merits.

DATED: Honolulu, Hawai`i, May 3, 1999

"se/_____" 1. James S. Burns
"se/_____" 2. Corinne K.A. Watanabe

Appendix C

NOS. 21208 AND 21399
IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I Plaintiff-Appellee,	)	CR. NOS. 96-2065 & 95-2104
	)	APPEAL FROM THE
v.	)	FIRST CIRCUIT COURT
	)	
DENNIS BALANAY, Defendant-Appellant	)	

MEMORANDUM OPINION

Defendant-Appellant Dennis Balanay (Dennis) appeals the following two judgements of the First Circuit Court: (1) the one count of False Reporting to Law-Enforcement Authorities (false reporting), [1/] Hawai'i Revised Statutes (HRS) § 710-1015 (1993), [2/] and sentencing him to probation for one year; and (2) the December 4, 1997 Judgement in Criminal No. 96-2065 "convicting" him of two counts of false reporting and sentencing him to probation for one year as to each count. Both judgements were based upon the jury's verdict. All sentences ran concurrently.

On appeal, Dennis raises the following points of error: (1) there was insufficient evidence to support his conviction; (2) the State of Hawai'i (the State) failed to negative his mistake of fact defense; (3) the trial court erred in failing to dismiss the charges as *de minimis*; (4) the trial court gave prejudicial and misleading jury instructions; and (5) the trial court erred in failing to instruct the jury on the defense of mistake of law. "We affirm."

1/ On October 17, 1995, Defendant-Appellant Dennis Balanay (Dennis) was charged with one count of False Reporting to Law-Enforcement Authorities (false reporting), Hawai'i Revised Statutes (HRS) § 710-1015 (1993), in Criminal No. 95-2104. On October 7, 1996, Dennis was charged with two counts of false reporting in Criminal No. 96-2065. The two cases were consolidated for trial on November 26, 1996 and Dennis was convicted on all three counts.

2/ HRS § 710-1015 reads:

> **False reporting to law-enforcement authorities.** (1) A person commits the offense of false reporting to law-enforcement authorities if the person intentionally makes a report or causes the transmission of a report to law-enforcement authorities relating to a crime or other incident within their concern when the person knows that the information contained in the report is false.
>
> (2) False reporting to law-enforcement authorities is a misdemeanor.

I. BACKGROUND

According to real property tax records, Dennis and David Robichaux (Robichaux) owned adjoining properties in zone 6, section 6, plat 1. Robichaux owned zone 6, section 6, plat 1, parcel 3 (parcel 3) after purchasing it from the estate of Lincoln Char (Char Estate) in 1994. Dennis, his mother Sophie Balanay (Sophie), and his father Bonifacio Balanay, Sr. (Bonifacio Sr.) (collectively, the Balanays) owned zone 6, section 6, plat 1, parcel 6 (parcel 6), located directly behind parcel 3.[3/] Dennis disputed Robichaux's ownership of parcel 3 and the "dirt road way or dirt track" which crossed through parcel 3 leading to parcel 6.

Sophie and Bonifacio Sr. purchased parcel 6 in 1965, and the Balanays have lived there since then. Through his research at public libraries, Dennis learned about the law of adverse possession. He based his understanding of adverse possession on HRS § 657-31 and related cases. He understood the "elements" of adverse possession to be "actual, open, hostile, notorious, continuous and uninterrupted [.]" Dennis alleged that he had met these requirements with respect to parcel 3 from 1965 until 1992 and, according to HRS 657-31, the 20-year statute of limitations had expired. Thus, Dennis maintained that he was the legal owner of parcel 3 by adverse possession.

On June 2, 1992, the Char Estate filed a complaint against Sophie, Bonifacio Balanay, Jr. (Bonifacio Jr.), and Dennis claiming legal ownership of parcel 3. On June 26, 1992, Dennis and Sophie, acting *pro se*, filed an answer opposing the complaint and alleging adverse possession. On June 29, 1992, Dennis, Sophie, and Bonifacio Jr., through their attorney, James Countiss (Countiss), filed an answer to the complaint and a counterclaim for legal ownership by adverse possession. On July 22, 1992, Dennis, Sophie, and Bonifacio Jr., acting *pro se*, filed an answer opposing the complaint and alleging adverse possession.

On September 29, 1993, the circuit court entered its Order Granting (Countiss's) Motion to Withdraw as Council for Defendants Sophie Balanay, Bonifacio Balanay [, Jr.,] and Dennis Balanay. Dennis testified that Countiss withdrew without notifying him or his fellow defendants.

On January 14, 1994, Dennis, Sophie, and Bonifacio Jr. failed to attend a hearing on a motion for default judgement. Dennis testified that he was not informed of this hearing. The court then dismissed the counterclaim and entered a default judgement against the defendants. As a result, Dennis and his fellow defendants were enjoined from entering parcel 3. Dennis testified that he received the default judgement in the mail but "relied on one of the court's rule [s] for not answering to the default, that's Hawaii Rules of Civil Procedure Rule 13, in case something is pending, the pleador need not answer."

In February 1994, Robichaux bought parcel 3 from Char Estate. He received a warranty deed and obtained three title insurance policies assuring ownership. The court also issued its January 31, 1994 Order Confirming Sale of

---

3/ Defendant's Exhibit "J" states that "on Nov[.] 15, 1988, Bonifacio Balanay Sr. passed away [.]" At trial, Dennis testified that "[m]y dad passed away in the year 1987.

Real Property (January 31, 1994 Order). In addition, the city recognizes Robichaux as the person who has paid the property taxes on parcel 3. 4/

Despite the evidence establishing Robichaux's ownership of parcel 3, Dennis continued to claim he owned parcel 3 through adverse possession. Consequently, whenever Dennis saw Robichaux on parcel 3, he called the police to report Robichaux for trespassing. Robichaux estimated that the police came to his house "between thirty and forty" times. Each meeting lasted approximately fifteen to thirty minutes.

On March 12, 1994, Honolulu Police Department (HPD) Officer Terry Leach (Officer Leach) arrived at parcel 3 in response to a call by Dennis. Robichaux presented Officer Leach with "a copy of the warranty deed and copies of civil papers" as proof of his ownership. Officer Leach then explained to Dennis that Robichaux's documents proved Robichaux owned parcel 3 and that Dennis could "take it up through civil court [.]" He also warned Dennis that he could be arrested for false reporting if he reported information to the police which he knew was not true.

On September 25, 1994, HPD Officer Harry Coelho (Officer Coelho) responded to a call by Dennis. Dennis and Robichaux told Officer Coelho that they would take the matter to civil court. This incident resulted in Court I of the October 7, 1996 Complaint in Criminal No. 96-2065.

On November 8, 1994, an attorney for Robichaux wrote to Dennis offering him a license to use the roadway across parcel 3. Dennis responded with a letter to the attorney claiming that Dennis owned the roadway and warning that "unwanted people who cross over my road is [sic] tresspassing [sic]. Yes, I will call 911 Honolulu police and file a report on people tresspassing [sic] over my road."

On February 11, 1995, HPD Officer Jesse Babauta (Officer Babauta) responded to a call by Dennis. After Robichaux showed Officer Babauta the January 31, 1994 Order, Officer Babauta explained to Dennis that Robichaux was not trespassing and that Dennis "should contact a lawyer if . . . he wants to dispute the claim [to parcel 3]." This incident resulted in Count II of the October 7, 1996 Complaint in Criminal No. 96-2065.

On March 6, 1995 Officer Leach responded to another call by Dennis. Officer Leach again tried to explain to Dennis that Robichaux had documents proving he owned parcel 3 and that he was not tresspassing. After Dennis "kept complaining that the court papers didn't mean anything to him," Officer Leach .

4/ Dennis testified in relevant part as follows:

> [A]ccording to the statutes, 84 CJS, tax station 414, it says any particular land that is connected to a certain property is assessed -- purposes is [sic] for assessment. So my mom, that property . . . is connected to parcel 1 -- tax map key 1-6-6-01-6, parcel 3, we have been paying taxes on that thirty years, it's equivalent.

arrested him for false reporting. This incident resulted in the October 17, 1995 Complaint in Criminal No. 95-2104.

The jury trial for the consolidated cases, Criminal Nos. 95-2104 and 96-2065, commenced on July 21, 1997. At trial, Dennis relied on a mistake of fact defense and alleged that he believed he was the owner of parcel 3 when he reported that Robichaux was tresspassing.

In her closing argument, the Deputy Prosecuting Attorney (DPA) told the jury that "[t]his case is about whether or not the defendant knew what he was doing was false reporting, whether or not he knew that the information in the report was false."

Counsel for Dennis then argued to the jury in relevant part as follows:

> As the prosecutor told you, a person commits the offense of False Reporting to Law Enforcement Authorities if the person intentionally makes a report or causes a transmission of a report to law enforcement authorities relating to the crime or the incident within their concern when the person, and it was read to you the person is Dennis Balanay, knows that the information contained in the report is false. . . .
>
> * * *
>
> Now, the Judge is going to give you . . . an instruction regarding basically a mistake of fact. And part of the instruction is going to read as follows. In this case the defendant, Dennis Balanay, is provided a defense to the charge if he was ignorant or mistakenly -- mistaken even though reasonably or recklessly as to a fact that negates his knowing that the information contained in the report was false.
>
> * * *
>
> And remember when you look in those instructions if he is mistaken or ignorant, that's a defense. And that mistake or ignorance can be reasonable or -- or, ladies and gentlemen, it can be reckless. He can substantially disregard an unjustified and substantial risk to the contrary. That's what the law allows him to do before it becomes a crime.

The DPA responded by stating in relevant part:

> Reason and common sense. That's the standard . . . [Remember] we can't get into or know what's in somebody's mind. All you know is what facts are or as they were presented

to you and what a reasonable person would know in those circumstances.

After an objection by defense counsel, the following discussion took place at a bench conference:

[Defense Council]: . . . [S]he's saying, Judge, what a reasonable person would know the standard is on that. As the complaint reads, my client knows and I want to be very specific that the jury knows a reasonable person in this situation what they would know, she's got to prove what my person knows.

[DPA]: There's no other way of proving what somebody knows other than the evidence. They can't get into this person's head and say what this one person knows.

The court then overruled defense counsel's objection, and the DPA continued her argument in relevant part as follows:

[DPA]: Thank you.

What you have to do is apply the evidence and the facts to determine what a reasonable person would have known in the same circumstance. . . .

. . . The issue in this case is whether or not faced with the circumstances, all of the circumstances, that he was faced with he should have known that what he was doing was wrong. . . .

* * *

This case is about a criminal court, its held in criminal court. And you, the jury, who have listened to all of the facts in this case need to take those facts and apply them to the two elements. The first one, which is uncontroverted, is that the defendant intentionally made a report to law enforcement officers about a crime. The second element you need to apply the facts to it, whether the defendant knew those circumstances were false when he did it.

(The remainder of April 22, 1999 Memorandum Opinion is attached to Joint Appendix Volume One.)

No. (2)

Supreme Court, U.S.
FILED
991920 AUG 2 1999
OFFICE OF THE CLERK

In The

Supreme Court of the United States

Dennis Balanay
Defendant - Appellant

Petitioner,

v.

State of Hawaii
Plaintiff - Appellee

Respondent.

On the petition for writ
of Certiorari to the court
whose judgement you seek to review
Hawaii's in the intermediate court of appeal
May 3, 1999 within case no. 21208
ORDER-DENYING-FOR-RECONSIDERATION.
SEE Appendix (A)

PETITION-FOR-WRIT-OF-CERTIORARI
JOINT APPENDIX - Volume 1

PRO, SE
Dennis Balanay
P.O. Box 357
Haleiwa, Hawaii 96712
Telephone: 637-9254
(Petitioner)

31pp

> Now hearing all of the evidence, ladies and gentlemen, the State is asking you very respectfully at this time to take the evidence, discuss the case among yourselves, apply all of your reasoning and common sense to it, and determine whether or not the defendant knew what he was doing at the time was false reporting.
>
> Thank you.

In its instructions to the jury, the court explained that in order for Dennis to be guilty of false reporting, he must have made a report to law enforcement "knowing that the information contained in the report was false." The court defined "knowingly" as follows:

> A person acts knowingly with respect to his conduct when he is aware that his conduct is of that nature.
>
> A person acts knowingly with respect to attendant circumstances when he is aware that such circumstances exist.
>
> A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause in such a result.

The court also gave the jury instruction on the mistake of fact defense as follows:

> It is a defense to the charge of False Reporting to Law Enforcement Authorities that the defendant engaged in prohibited conduct under ignorance or mistake of fact if the ignorance or mistake of negatives the state of mind required to establish an element of the offense. In this case the defendant, Dennis Balanay, is provided a defense to charge is he was ignorant or mistaken, either reasonably or recklessly, as to the fact that negates his knowing that the information contained in this report was false.
>
> The burden is upon the prosecution to prove beyond a reasonable doubt that the defendant, Dennis Balanay, was not ignorant or mistaken as to a fact that negates his knowing that the information contained in his report was false. If the prosection fails to meet its burden, then you must find the defendant not guilty.

The court did not give a jury instruction on the mistake of law defense.

On July 24, 1997, the jury found Dennis guilty on all three counts.

II. DISCUSSION

A.

Sufficiency of Evidence

Dennis argues that the State failed to present sufficient evidence to support his conviction because it did not prove that Dennis knew the information contained in his reports to the police was false. We disagree.

1.

> On appeal, when reviewing the sufficience of evidence, evidence adduced in the trial court must be considered in the strongest light for the prosecution when the appellate court passes on the legal sufficiency of such evidence to support a conviction. . . . The test on appeal is not whether guilt is established beyond a reasonable doubt, but whether there is substantial evidence to support the conclusion of the trier of fact. . . .
>
> "Substantial evidence" . . . is credible evidence which is of sufficient quality and probative value to enable [a person] of reasonable caution to support a conclusion.

State v. Eastman, 81 Hawai`i 131, 135, 913 P.2d 57, 61 (1996) (citations omitted)

2.

Pursuant to HRS § 710-1015, a person commits the offense of false reporting if: (1) the person intentionally makes a report to law-enforcement authorities; and (2) the person knows the reported information is false. In this case, Dennis concedes that he intentionally made the alleged reports to the police. The determinative issue is whether the State presented sufficient evidence to establish that Dennis "knowingly" reported false information.

A person acts "knowingly" with respect to "attendant circumstances when he is aware that such circumstances exist."

HRS § 702-206(2)(b) (1993).[5] In establishing state of mind, "circumstantial evidence and reasonable inferences arising from circumstances surrounding the defendant's conduct is sufficient."
Eastman, 81 Hawai`i at 141, 913 P.2d at 67 (citation omitted).
"[I]t is not necessary for the prosecution to introduce direct evidence of a defendant's state of mind in order to prove that the defendant acted intentionally, knowingly, or recklessly."[6] Id. at 140-41, 913 P.2d at 66-67 (citation omitted and footnote added).

In this case, the State presented substantial evidence that Dennis knew that he did not own parcel 3. Dennis acknowledged that Robichaux paid the property taxes for parcel 3 and that the court previously dismissed the claim of adverse possession by Dennis and entered a judgement against him. Prior to the offense in question, police officers explained to Dennis that Robichaux had documents verifying his ownership and was not tresspassing on parcel 3. Also, Robichaux offered Dennis a license to use parcel 3.

Although Dennis testified that he believed he owned parcel 3 through adverse possession, "[i]n reviewing whether substantial evidence exists to support a conviction, . . . due deference must be given to the right of the [jury] to determine credibility, weigh the evidence, and draw reasonable inferences from the evidence adduced." State v. Lubong, 77 Hawai`i 429, 432, 886, P.2d 766, 769 (App. 1994) (citing State v. Naeole, 62, Haw. 563, 565, 617, P.2d 820, 823 (1980). Thus viewing the evidence in the light of the strongest for the State, we conclude there was substantial evidence to support the jury's finding that Dennis made his reports knowing they contained false information.

5/ HRS § 702-206 (1993) reads in relevant part:

Definitions of states of mind. . . .

(2) "Knowingly"

(a) A person acts knowingly with respect to his conduct when he is aware that his conduct is of that nature.

(b) A person acts knowingly with respect to attendant circumstances when he is aware that such circumstances exist.

(c) A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

6/ While instructing the jury, the court stated that

[t]he state of mind with which a person commits a[n] act, such as intentionally or knowingly, may be proved by circumstantial evidence. While witnesses may see and hear and thus be able to give direct evidence of what a persons [sic] does or fails to do, there can be no eye witness account of the state of mind with which the acts are done or omitted, but what a person does or fails to do may or may not indicate a state of mind with which one does or refrains from doing an act.

B.

Mistake of Fact Defense

Dennis argues that the State failed to disprove his mistake of fact defense beyond a reasonable doubt. Specifically, Dennis contends that the State failed to disprove his defense that he mistakenly believed he was the owner of parcel 3 through adverse possession. We disagree.

1.

The pertinent question is "whether there was substantial evidence to support the conclusion of the trier fact." Eastman, 81 Hawai`i at 135, 913 P.2d at 61 (citations omitted).

2.

HRS § 702-218 (1993) provides in relevant part as follows:

> **§ 702-218 Ignorance or mistake as a defense.** In any prosecution for an offense, it is a defense that the accused engaged in the prohibited conduct under ignorance or mistake of fact if:
>
> (1) The ignorance or mistake of negatives the state of mind required to establish an element of the offense[.]

In this case, it was the State's burden to prove beyond a reasonable doubt that Dennis "knowingly" reported false information. If Dennis mistakenly believed[7/] he owned parcel 3, this would "[negative] the state of mind required" under HRS § 710-1015. Since Dennis raised the mistake of fact defense, the State was required to negative the defense. State v. Cavness, 80 Hawai`i 460, 464, 911 P.2d 95, 99 (App. 1996)

Dennis relies on Cavness in support of his mistake of fact defense. In Cavness, the defendant raised the mistake of fact defense in response to charges against him for criminal tresspass. The defendant alleged that he was believed he was the owner of the property. The trial court, however, did not allow him to admit evidence of this belief. Id. at 463, 911, P.2d at 98. On appeal, this court concluded that the trial court erred by excluding evidence of the defendant's mistaken belief and vacated the defendant's conviction. Id. at 466,911 P.2d at 101.

Dennis's case, however, differs from Cavness. Dennis was allowed to and did in fact testify that he believed he owned the property. "In a jury trial, [a defendant's] state of mind is a fact that must be determined by the jury." State v. Holburn, 78 Hawai`i 422, 425, 895 P2.d 173, 176 (App. 1995) (citation omitted). The state provided substantial evidence to prove the requisite state of mind of "knowingly." Therefore, it follows that there was also substantial evidence to support the jury's conclusion that the State negatived the mistake of defense asserted by Dennis.

7/ In order to negate the "knowingly" state of mind, the defendant's mistake may be reasonable, negligent, or reckless. The Commentary on HRS § 702-218 (1993) provides the following example:

> [A] person who is mistaken (either reasonably, negligently, or recklessly) as to which one of a number of similar umbrellas on a rack is the person's and who takes another's umbrella should be afforded a defense to a charge of theft predicated on either intentionally or knowingly taking the property of another.

C.

The DPA's Erroneous Argument to the Jury

Dennis argues that the court's instructions "failed to correct the incorrect impression created by the State that a reasonable person standard applied." We disagree.

The DPA argued to the jury that they should determine the mistake of fact defense by deciding whether a reasonable person in Balanay's shoes would have been so mistaken. We agree with Dennis that this argument by the State to the jury was wrong. Under HRS § 710-1015, the State was required to prove that Dennis had "know[n] that the information contained in [his] reports [was] false." Dennis's mistaken belief that he owned the parcel 3 would have negated the required state of mind whether his mistake was reasonable, negligent, or reckless. See Commentary on § 702-218 (1993).

The question is whether the DPA's erroneous argument to the jury, and the court's error in not immediately correcting the DPA's error upon defense counsel's request, was harmless beyond a reasonable doubt. Our answer is yes.

Generally, a prosecutor's improper remarks are considered cured by the court's instructions to the jury, because it is presumed "'that the jury abided by the court's admonition to disregard the statement'" State v. Kahalewai, 55 Haw. 127, 129, 516, P.2d 336, 338 (1973) (quoting State v. Cavness, 83 Hawai'i 335, 926, P.2d 1258 (1996), the Hawai'i Supreme Court stated that

The trial court is the sole source of all definitions and statements of law applicable to an issue to be resolved by the jury. . . . [F]aced with the inaccurate or incomplete instructions, the trial court has a duty to, with the aid of counsel, either correct the defective instructions or to otherwise incorporate it into its own instructions. In other words, the ultimate responsibility properly to instruct the jury lies with the circuit court and not with the trial counsel.

Id. at 358, 926 P.2d at 1281 (citation omitted).

Initially, we note that the DPA's erroneous argument to the jury contrasted with the defense counsel's correct argument to the jury. More significantly, the court subsequently instructed the jury as follows:

The court will instruct you now concerning the law which you must follow in arriving at your verdict.

You are the exclusive judges of the facts of this case. However, you must follow these instructions even though you may have opinions to the contrary. Thus, the court expressly told the jury that the court's instructions were controlling.

The court further told the jury that one of the elements required to convict Dennis of false reporting was that Dennis made a report to the police "knowing that the information contained in the report was false." The court defined "knowingly" by using the language provided in HRS § 702-206. It expressly told the jury that Dennis "is provided a defense to the charge if he was ignorant or mistaken, either reasonably or recklessly, as to the fact that negates his knowing that the information contained in this report was false." Although this latter statement should have said

"if he was ignorant or mistaken, either reasonably, negligently, or recklessly," see Commentary on § 702-218, in the context of this case, the omission of the work "negligently" was harmless because if Dennis was mistaken, his mistake was at best reckless.

Therefore, we conclude that the court sufficiently corrected any misunderstandings that may have been caused by the State's erroneous closing argument.

D.

Mistake of Law Jury Instruction

Dennis argues that the trial court committed plain error in failing to instruct the jury *sua sponte* on the defense of mistake of law. Dennis contends that such an instruction should have been given since he acted based on his reasonable reliance on the definition of adverse possession in HRS § 657-31.

1.

In reviewing jury instructions or omissions thereof in criminal cases, we must decide "whether, when read and considered as a whole, the instructions given are prejudicially insufficient, erroneous, inconsistent, or misleading." Cullen, 86 Hawai`i 1, 8, 946, P.2d 955, 962 (1997) (quotation mark and citations omitted).

The Hawai`i Supreme Court has held that "[d]efendants are entitled to an instruction on every defense or theory of defense having any support of evidence. . . ." State v. Robinson, 82 Hawai`i 304, 313, 922 P.2d 358, 367 (1996) (citation, emphasis, and quotation marks omitted). Such evidence, however, must "support the consideration of that issue by the jury, no matter how weak, inconclusive, or unsatisfactory the evidence may be." Id. at 313-14, 922 P.2d at 367-68 (citation and quotation marks omitted).

2.

To decide whether the court should have instructed the jury *sua sponte* on the defense of mistake of law, we must determine whether the evidence presented justified such an instruction.

HRS § 702-220 (1993) states that

> it shall be an affirmative defense that the defendant engaged in the conduct or caused the result alleged under the belief that the conduct or result was not legally prohibited when the defendant acts in reasonable reliance upon an official statement of the law, afterward determined to be invalid or erroneous, contained in:
>
> (1) A statute or other enactment [.]

We conclude that this defense does not apply in this case. HRS § 657-31, the "official statement of the law" that Dennis based his claim of ownership on, has not been "afterward determined to be invalid or erroneous[.]" Instead, Dennis's alleged mistaken belief resulted from his own misinterpretations of HRS § 657-31.

Originally, the Proposed Draft of the [Hawai`i Penal] Code included a mistake of law defense with the mistake of fact defense stated in HRS § 702-218. Commentary on § 702-218. However, "[t]he Legislature[,] in dealing with [HRS] § 702-218[,] deleted a defense based on mistake of law." Supplemental Commentary on § 702-218 (1993). Nevertheless,

> [a]lthough the Legislature did not provide for a defense based on mistake of law, the [Hawai`i] State Supreme Court has recognized that, in some instances, there must exist, as necessary corollary to the definition of certain offenses, a defense based on this type of mistake. [See State v. Marley, 54 Haw. 450, 476-77, 509 P.2d 1095, 1111-12 (1973).]

Supplemental Commentary on § 702-218.

> In Marley , the Hawai`i Supreme Court recognized that a reasonable mistake of law is often a complete defense . . . when the mistake of law negatives a mental state which much be shown to establish a material element of the crime. Therefore, defendants' "honest" and "reasonable" belief that they had a right or duty to be present on Honey well property, in that they had a defense assertable under American treaty law--no matter how incorrect such a belief might be--would have exonerated defendants by negativing the mental state that is an essential element of the crime.

Marley, 54 Haw. at 476-77, 509 P.2d at 1111-12. Thus, under Marley, Dennis would have had a valid mistake of law defense if his error were an "honest" and "reasonable" one. However, Dennis's erroneous belief that he owned parcel 3 despite a default judgement against him, a court order confirming the sale of parcel 3 to Robichaux, and numerous police warnings that Robichaux was not trespassing on parcel 3, was not a reasonable mistake of law.

Furthermore, even if Dennis was entitled to an instruction on the mistake of law defense, the court's failure to provide such an instruction was harmless. Dennis contends that his reliance on HRS § 657-31, and his mistaken belief that he owned parcel 3, negated the "knowingly" state of mind required for false reporting. This is the same argument he made with respect to his mistake of fact defense. The jury rejected this argument when it rejected Dennis's mistake of fact defense.

E.

De Minimis

Dennis next contends that the trial court committed plain error by not dismissing the charges against him as *de minimus*. We disagree.

We review a trial court's alleged error of failing to dismiss a charge as *de minimus* under the abuse of discretion standard. Cavness, 80 Hawai`i at 467, 911 P.2d at 102 (citing State v. Akina, 73 Haw. 75, 828 P.2d 269 (1992)). "We will reverse the trial court only if the court clearly exceeded the bounds of reason or disregarded rules or principles of law or practice to the substantial detriment of a party litigant." State v. Ornellas, 79 Hawai`i 418, 423, 903, P.2d 723, 728 (App. 1995) (citation and internal quotation marks omitted).

2.

A dismissal of a charge as *de minimus* under HRS § 702-236 (1993)[8/] is warranted when the defendant's actions do not directly violate a statute and/or contradict the legislative intent behind the statute. Ornellas, 79 Hawai`i at 423, 903, P.2d at 728; see HRS § 702-236(1)(b). The purpose of HRS § 710-1015 is to: (1) prevent the waste of public resources; and (2) avoid the possible harm that may occur from diverting public resources from legitimate needs. Commentary on HRS § 710-1015 (1993).

We conclude that Dennis's actions did "cause or threaten the harm or evil sought to be prevented by" HRS § 710-1015. HRS § 702-236(1)(b). The record shows that Dennis called the police on thirty to forty occasions and that each meeting took between fifteen to thirty minutes. Thus, Dennis's false reports to the police resulted in the waste of public resources and may have diverted them from legitimate needs.

Dennis further contends under HRS § 702-236(1)(c) that his case "present[ed] such other extenuations that it cannot reasonably be regarded as envisaged by the legislature in forbidding the offense" He argues that "the legislature did not intend to punish persons who file reports with no malicious intentions of causing diversion or wastage[.]" We disagree with Dennis that this situation "cannot reasonably be regarded as envisaged by the legislature" when it enacted HRS § 710-1015. Furthermore, there is no evidence that HRS § 710-1015 was intended to punish only those who "maliciously" report false information. Therefore, we conclude that the trial court did not abuse its discretion in failing to dismiss the charges against Dennis as *de minimus*.

8/ HRS § 702-236(1) (1993) provides in pertinent part:

> **De minimis infraction.** (1) The court may dismiss a prosecution if, having regard to the nature of the conduct alleged and the nature of the attendant circumstances, it finds that the defendant's conduct:
>
> (a) Was within a customary license or tolerance, which was not expressly refused by the person whose interest was infringed and which is not inconsistent with the purpose of the law defining the offense; or
>
> (b) Did not actually cause or threaten the harm or evil sought to be prevented by the law defining the offense or did so only to an extent too trivial to warrant the condemnation of conviction; or
>
> (c) Presents such other extenuations that it cannot reasonably be be regarded as envisaged by the legislature in forbidding offense.

On this appeal, Dennis relies only on subsection (b) and (c) as grounds for a dismissal.)

IV. CONCLUSION

Accordingly, we affirm the circuit court's December 4, 1997 Judgement in Criminal No. 95-2104 and the December 4, 1997 Judgement in Criminal No. 96-2065.

DATED: Honolulu, Hawaii, April 12, 1999.

Jon N. Ikenaga, Deputy
Public Defender, City and
County of Honolulu, on the
brief for defendant-appellant.

Andrea T.Y. Low, Deputy
Prosecuting Attorney, City and
County of Honolulu, on the
brief for plaintiff-appellee.

APPEALS CLERK, FIRST CIRCUIT
##

S.C. NO. 21208

IN THE SUPREME COURT OF THE STATE OF HAWAII

TITLE OF CASE:

STATE OF HAWAI'I, Pl-Appellee,

vs

DENNIS BALANAY, Def-Appellant.

FILED
Apr 13 2 28 PM '99
K. MIYAMURA
CLERK SUPREME COURT

RECEIVED FROM CLERK OF THE SUPREME COURT, STATE OF HAWAII,

TWO (2) COPIES

MEMORANDUM OPINION, filed 4/12/99.

in the above-entitled case.

DATED: _____, HAWAII, APR 12 1999, 19____

CLERK FIRST CIRCUIT COURT
STATE OF HAWAII

RETURN TO CLERK
SUPREME COURT

BEST AVAIL

Balanay's Property Deed to TMK 6-6-01-06

RECORDATION REQUESTED BY:

Ueanne S. Hokanson

AFTER RECORDATION, RETURN TO:

Ueanne S. Hokanson
241 Clark St. Wahiawa

RETURN BY: MAIL ( ) PICKUP ( )

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECEIVED AND RECORDED
Liber 4955 Page 176
'65 FEB 1 PM 1:50

UNDATED REGISTRAR

Certified to be a true and correct copy of the original presented for record
MICHIO ABAGI, Registrar

Tax Key: 6-6-01-6

WARRANTY DEED

THIS DEED, made this 30th day of January, 1965, by and between GREGORIO S. RECALDE, unmarried, and TOMAS LANGI, unmarried, both of Haleiwa, Hawaii, hereinafter collectively called "Grantor", and BONIFACIO BALANAY and SOPHIE BALANAY, husband and wife, whose residence and post office address is Emerson Road, Haleiwa, Hawaii, hereinafter collectively called "Grantee",

WITNESSETH

That Grantor, for a valuable consideration, the receipt whereof from Grantee is hereby acknowledged, does hereby grant, bargain, sell and convey unto Grantee, as Tenants by the Entirety, with full rights of survivorship, in fee simple absolute, all of that certain real property more particularly described as follows:

All of that certain parcel of land (being Apana 2 of Royal Patent No. 2642, Land Commission Award 7408 to Kawahamana), containing an area of 0.19 Acre, the location of the said premises being shown on First Taxation Division Tax Key Map 6-6-01-6, situate at Kawailoa, Wailua, City and County of Honolulu, State of Hawaii.

I hereby certify that this is a true copy from the records of the Bureau of Conveyances.

Registrar of Conveyances
Assistant Registrar, Land Court
State of Hawaii

ABLE COPY

STATE OF HAWAII)
) ss. BOOK 4955 PAGE 178
CITY AND COUNTY OF HONOLULU)

On this 30th day of January, 19 65, before me personally appeared GREGORIO S. RECALDE

SEAL

to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

Notary Public, First Judicial Circuit, State of Hawaii

My commission expires: 11-30-68

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

On this 30th day of January, 19 65, before me personally appeared TOMAS LANGI

SEAL

to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

Notary Public, First Judicial Circuit, State of Hawaii

My commission expires: 11-30-68

STATE OF HAWAII)
) ss. BOOK 4955 PAGE 178
CITY AND COUNTY OF HONOLULU)

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STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

On this 30th day of January, 19 65, before me personally appeared TOMAS LANGI

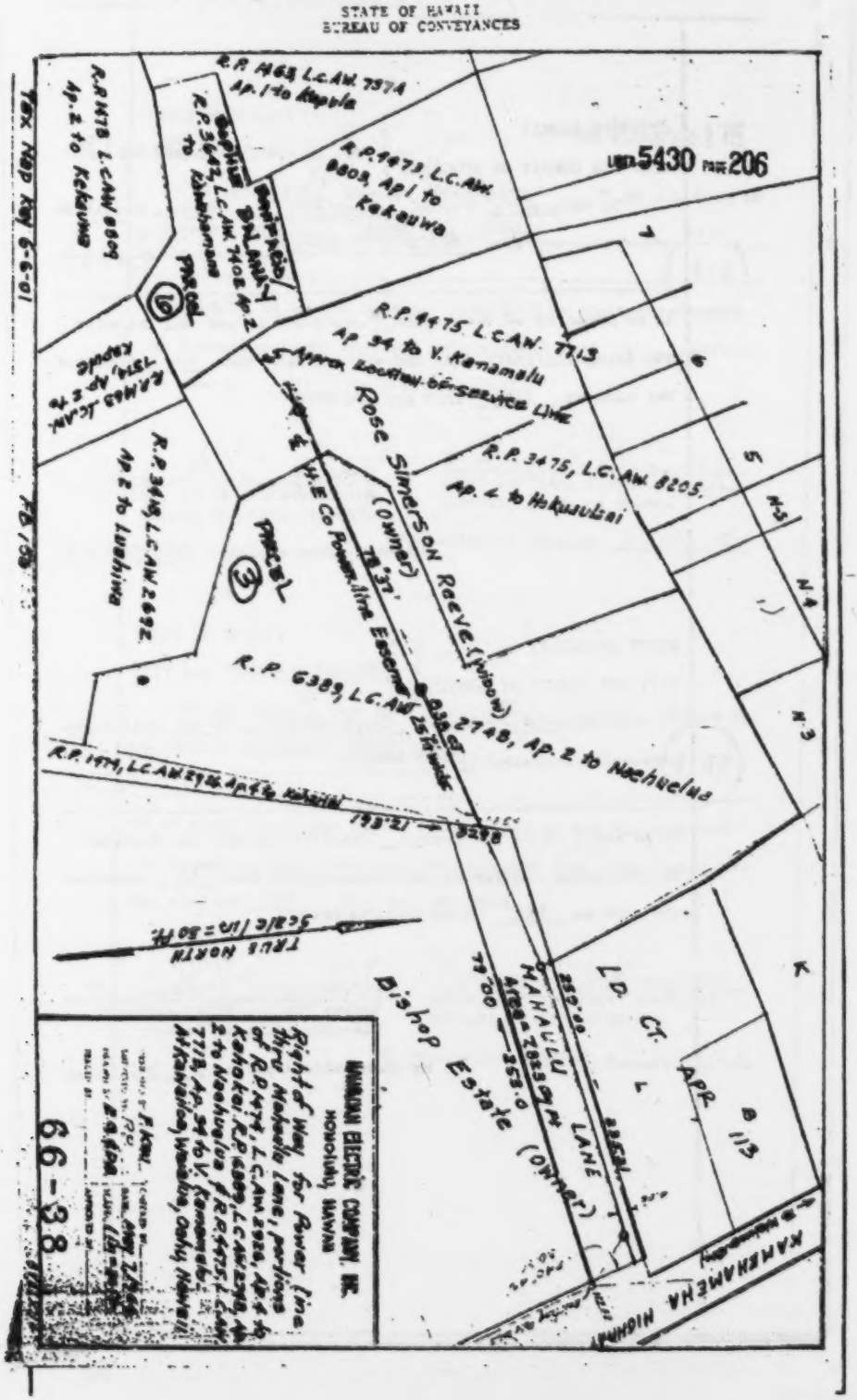
SEAL

to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

Notary Public, First Judicial Circuit, State of Hawaii

My commission expires: 11-30-68

Appendix (E) - 1966 Hawwaiian Electric Powerline to Balanay's Property TMK 6-6-001-06


STATE OF HAWAII
BUREAU OF CONVEYANCES
R.P. 4468 L.C.Aw. 7974 Ap. 1 to Kapela
R.P. 4473, L.C.Aw. 8808, Ap. 1 to Kekauwa
LIBER 5430 PAGE 206
R.P. 4475 L.C.Aw. 7713 Ap. 34 to V. Kanamalu
Approx. location of service line
Rose Simerson Reeve (Widow)
H.E. Co. Power line Easement 25 feet wide
R.P. 6389, L.C.Aw. 2748, Ap. 2 to Nachuelua
R.P. 1974, L.C.Aw. 8794, Ap. 4 to Kekauila
TRUE NORTH
Scale 1/2" = 50 Ft.
Bishop Estate
MAHALILU LANE
L.D. Ct. L
APP. B 113
KAMEHAMEHA HIGHWAY
HAWAIIAN ELECTRIC COMPANY, INC.
HONOLULU, HAWAII
66-38

E 0033

Board of Water Supply

APPLICATION FOR WATER SERVICE

66-071-D Kam Hwy.

From Mateo Cunlua

To Benifacio Balanay
P. O. Box 957
Haleiwa, HI 96712

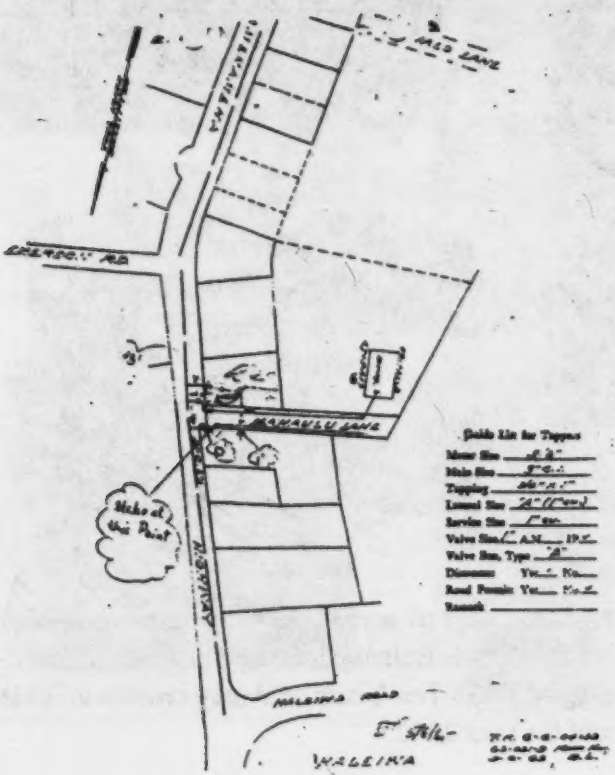
1/26/68

12/21/67

JAN 26 1968

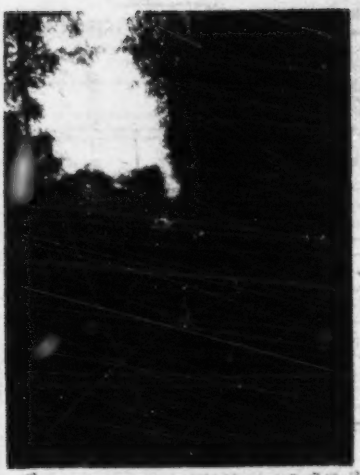
attached

0000 1943



Appendix (F)
Balanay's of TMK 1-6-6-01-6 received Honolulu Board of Water Supply service since 1968 until the year 2000. Balanay's water line crosses over TMK 1-6-6-01-03 for about 35 years.

A.



C.

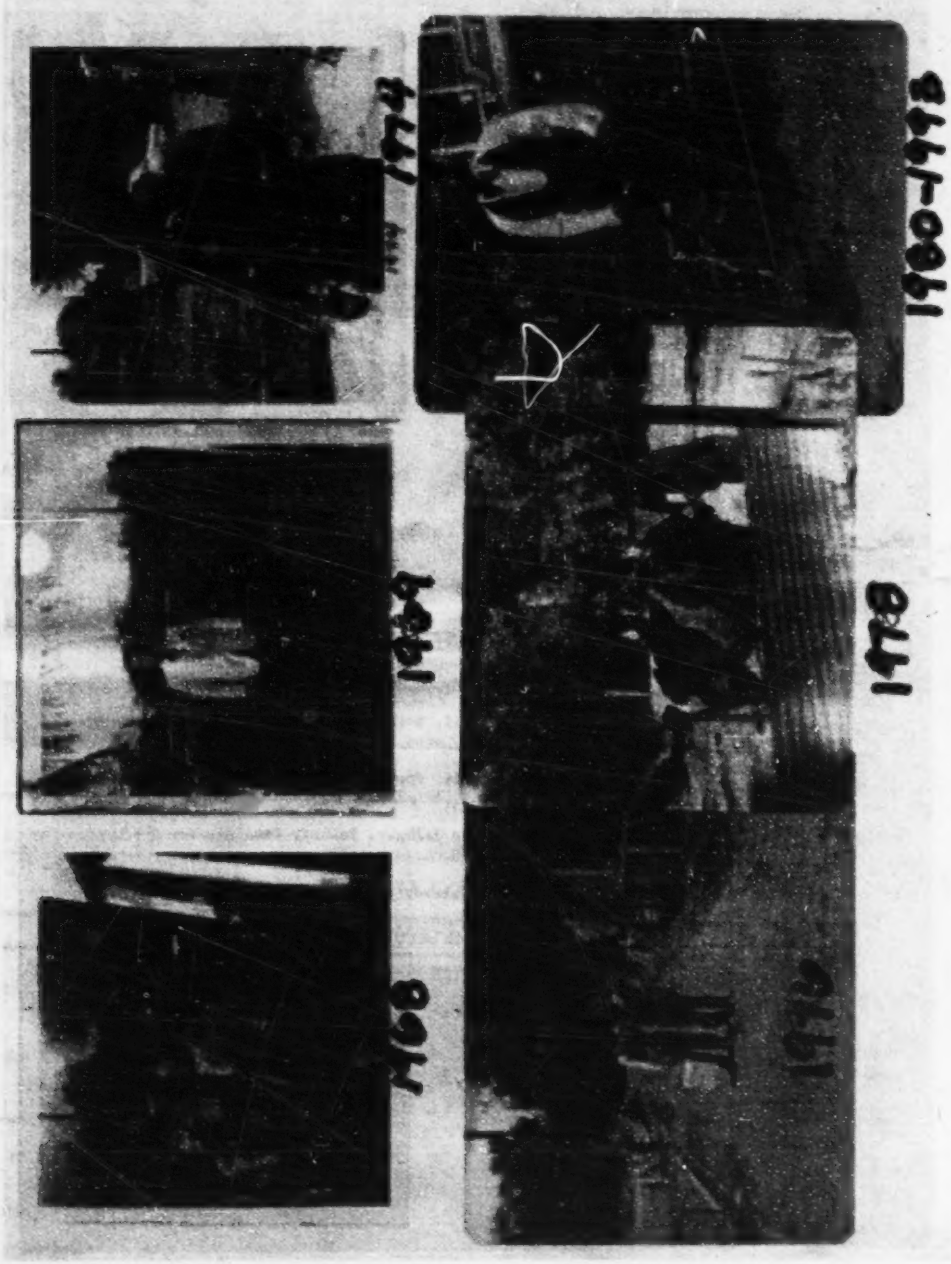
D.

B.

E.

Appendix (G) - Photos B, C & D are of actual roadway across tax map key (TMK) 1-6-6-01-03 which Dennis Balanay has legal property title under Hawaii Revised Statute 657-31 Ten Years. Balanay crossover TMK 1-6-6-01-03 since 1965 until the year 2000. -

Under Hawaii Revised Statutes 657-31 Ten Years, Balanay's have adverse possession property title to roadway across TMK 1-6-6-01-03. All photos on page 28a and 29a were Court Exhibit (G) and Court Exhibit (H) during trial hearing July 21-1997. See page 30a for exhibit list.



STATE OF HAWAII CIRCUIT COURT OF THE FIRST CIRCUIT	EXHIBIT LIST	CASE NUMBER CR. NO. 95-2104 and 96-2065

PLAINTIFF	PLAINTIFF ATTORNEY (Name, Address and Tel. No.)
State of Hawaii	Sherri-Ann Chun Deputy Prosecuting Attorney
DEFENDANT	**DEFENDANT ATTORNEY** (Name, Address and Tel. No.)
Dennis Balanay	Neil N. Murakami Deputy Public Defender

DATE OF TRIAL OR HEARING	DATE JUDGMENT FILED	PREPARING CLERK	DIVISION
July 21, 1997		N. Kikuchi	Seventeenth

EXHIBIT NO. IDENTIFY NO. CODE P PLAINTIFF D DEFENDANT	OFFERED FOR IDENTIFICATION	RECEIVED IN EVIDENCE	WITHDRAWN	DESCRIPTION OF EXHIBIT	DATE R - RETURNED D - DESTROYED OTHER COMMENTS
A (not submitted)				Certified Copy of the Complaint in Civil No. 92-1941-06	
B (not submitted)				Certified Copy of Civil No. 92-1941-06, Defendant's Sophie Balanay, Bonifacio Balanay, Jr. and Dennis Balanay's Answer to Plaintiff's Complaint(filed 6/2/92)	
C (not submitted)				Copy of Court Minutes in Civil No. 92-1941-06	
D		x		Certified Copy of Civil No. 92-1941-06, Order Granting Motion to Withdraw as Counsel for Defendant's Sophie Balanay, Bonifacio Balanay and Dennis Balanay	
E		x		Session Laws of Hawaii, Seventh State Legislature, Regular Session 1973, Acts 26 and 27	
F			x	Session Laws of Hawaii, Fourth State Legislature, Regular Session 1967, Act 258	
G		x		~~Charge~~ Photographs of Dennis Balanay, Balanay family and Property (daring 1968 through 1980)	
H		x		~~Charge~~ Photographs of the Balanay Property and roadway existing on property	

FOR OFFICE USE ONLY

LOCATION OF EXHIBITS

☐ Attached ☐ Other _____

☐ Shelf No. _____

☐ Code No. _____

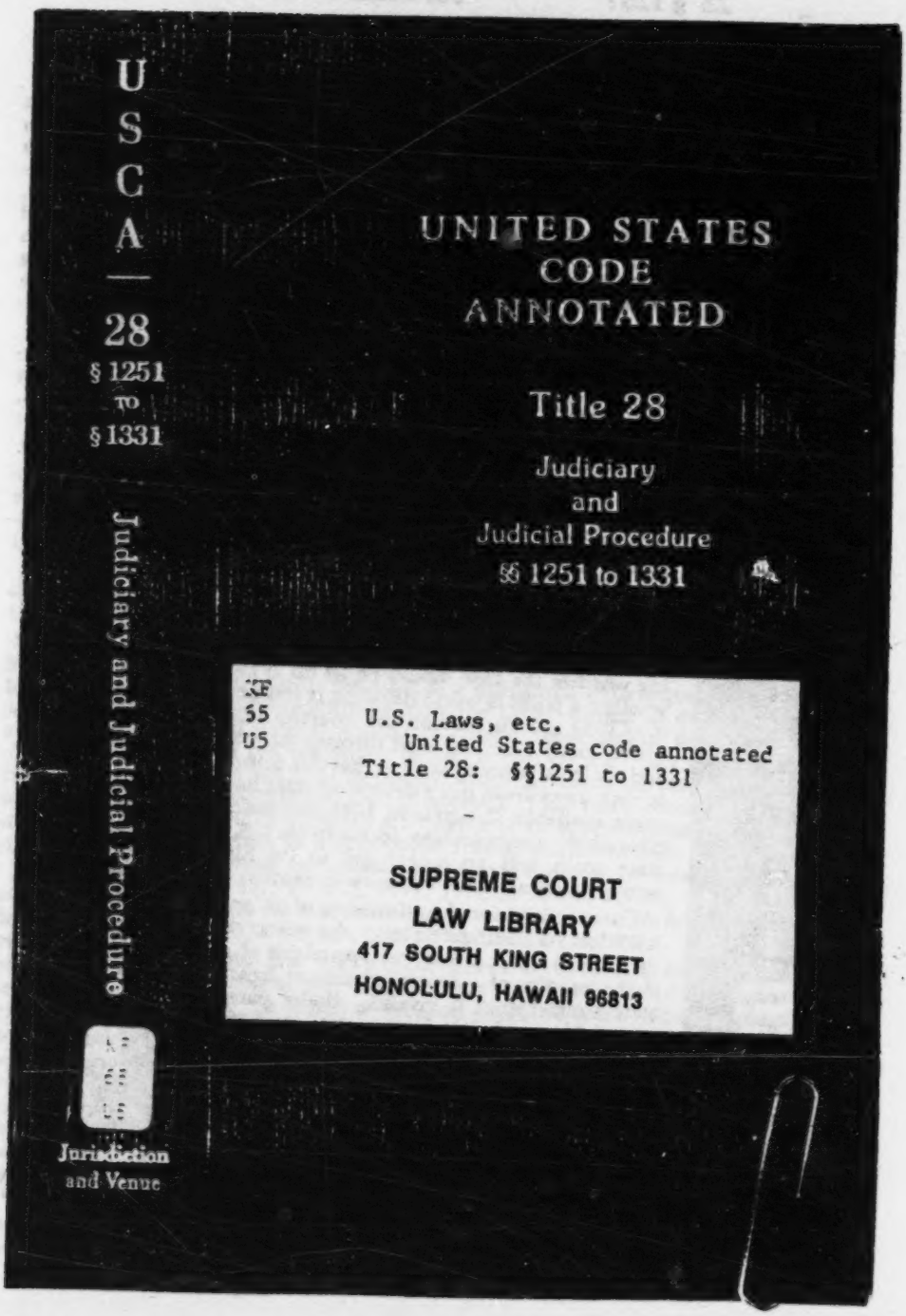
DATE	RECEIVED:	PAGE 1 OF 2 PAGES

FORM NO. 03H10 EXHIBIT LIST 1CP-023

Appendix (H)

United States Code Annotated Title 28

Section 1257



COMMENTARY ON 1988 REVISION

by David D. Siegel

U S C A | 28 § 1251 to § 1331 Judiciary and Judicial Procedure KF 65 U5 Jurisdiction and Venue

Section 1257 is another statute amended by the Supreme Court Case Selections Act (Public Law 100-352), which became law on June 27, 1988. All of the old contents were stricken out and a fresh § 1257 was enacted. The old paragraphs (1) and (2), authorizing appeal, were eliminated and only the certiorari procedure, of what was previously paragraph (3), was retained. That old paragraph (3), without change in substance, becomes subdivision (a) in the new § 1257. The last clause of the prior statute, treating the District of Columbia Court of Appeals as the equivalent of a state court for purposes of § 1257, is retained as a separate subdivision and given the letter (b).

The section governs the routing of cases from the highest state courts to the U.S. Supreme Court. Its amendment was a key part of the 1988 bill, whose main purpose was to eliminate the remaining "appeal" bases for review by the Supreme Court and require all cases to use the "certiorari" route.

The appeal route meant that Supreme Court review was mandatory: the Court would have to review the case on its merits. The certiorari route is discretionary: in effect it's a petition for permission to appeal. The Court grants the petition only if it finds that the case presents issues that warrant its attention.

The time and effort spent in determining a case on its merits—which usually involves the full briefing of the case and its oral argument—is substantially greater than that involved in determining whether the case should be let up in the first place. Deciding whether a point is worth deciding is less demanding than deciding it. Citing the burdens on the Court in having to decide on their merits many cases extruded through the mandatory "appeal" route and the great amount of time that this mandatory review necessarily took away from more deserving cases having only the certiorari route available, Congress in 1988 eliminated the mandatory route altogether. Cases seeking access to the U.S. Supreme Court from a state court will no longer get to the Supreme Court with an outright appeal; they will have to petition for certiorari.

The standard for the allowance of an appeal was also found to have lost its justification over the years. Under paragraph (1) of the prior § 1257, a case was appealable of right from a state court if the validity of a federal statute or treaty was at issue and the state court found it invalid. Under paragraph (2), a case was appealable as of right from a state court if it involved the validity of a state statute contested under some federal provision and the state court upheld the statute. (The state "statute", moreover, was construed to include local ordinances and even administrative regulations, tending to turn the appeal road into an even more crowded one.) In both cases the state court was in effect upholding the state in a contest against the federal sovereign, and the presumption underlying that doing was that the decision was suspect. Hence, appeal as of right.

With the 1988 legislation, Congress rejects that premise as unjustifiably suspicious, and, with the repeal of both paragraphs, it leaves

U S C A — 28 § 1251 TO § 1331 Judiciary and Judicial Procedure KF 65 L5 Jurisdiction and Venue

the decision of whether to review to the Supreme Court. If the state court decision can be made to seem all that suspect to the Supreme Court on a certiorari petition, and the case involves an important public issue worthy of the Court's attention, the Court can be expected to grant certiorari. Congress realized that it was the Supreme Court's "finite time" that was at stake here, and that the importance of every case had to be judged not on its own intrinsic merit alone, but against all the other cases clamoring for the Court's attention. Congress's conclusion was that a judgment of each case's worth would have to be made only by one in a position to judge as well the relative worth of all the case's competitors, and only the Supreme Court occupied such a position.

Congress's reaction was the same here as it was under § 1254, governing the review of decisions of the federal courts of appeals. From that statute, too, which had both appeal and certiorari provisions, the one allowing an appeal was eliminated and the certiorari provision left to do the whole job. And a similar suspicion-based premise underlay the appeal provision in § 1254. Conversely to the appeal provision in § 1257, the one in § 1254 permitted appeal to the Supreme Court when the federal court of appeals had before it the validity of a state statute under federal law and the court found the state statute invalid. That was the federal sovereign finding against the state sovereign, and it was marked with the same suspicion that underlay § 1257 on the other side of the coin. In the circumstances of today, it appeared to Congress an unseemly comment on our federalism.

The abolition of the appeal as of right will also remove the problem of what precedential influence to give a U.S. Supreme Court decision affirming an appealed case summarily, or, indeed, dismissing it "for want of a substantial federal question", a kind of calendar-sparing weapon the Court turned to over the years to avoid the full hearing of an appealed case that did pose a federal issue but one which lacked import by the Court's standards. Unlike a denial of certiorari, which the Court has made clear is not to be taken as any kind of approval of the result reached below on the merits, a summary affirmance of an appealed case, or its dismissal for want of a substantial federal question, while not of the same influence and impact as a signed opinion, *Edelman v. Jordan*, 415 U.S. 651, 94 S.Ct. 1347, 39 L.Ed.2d 662 (1974), was nevertheless held to be a decision approving the merits, *Hicks v. Miranda*, 422 U.S. 332, 95 S.Ct. 2281, 45 L.Ed.2d 223 (1975).

Note that the section allows certiorari to review not just a decision of the "highest court" of a state, but of the highest state court "in which a decision could be had". That language, contained in the old section and repeated in the new, takes note of the internal strictures a state may impose on appeals within its own court system, perhaps stopping a case at some lower level and barring it from review by the state's highest court, or, for that matter, from any appellate court at all. If that case nevertheless poses a federal question, review of it can be applied for to the U.S. Supreme Court—solely by the certiorari route, of course—from whatever court it has been able to reach within the state system.

Suppose, for example, that State X has set up several potential tiers of appeal for a case commenced in a court of limited jurisdic-

UNITED STATES CODE ANNOTATED

U S C A
28 § 1251 to § 1331
Judiciary and Judicial Procedure
KF 65 U5
Jurisdiction and Venue

28 § 1257

Note 13

13. —— Intermediate courts

Judgment of New York Supreme Court, Appellate Division, upholding order granting body execution as against constitutional attack was not that of the "highest court of a state" in which a decision could be had within this section giving Supreme Court jurisdiction to review such decision, where New York Court of Appeals had determined that the order appealed from was not final and was accordingly not reviewable as of right and petitioner had not sought to appeal to Court of Appeals by leave of Appellate Division as required by statute in case of nonfinal orders, and therefore certiorari to Appellate Division was improvidently granted. Gotthilf v. Sills, N.Y.1963, 84 S.Ct. 187, 375 U.S. 79, 11 L.Ed.2d 159.

Where higher state court is by Constitution or statute without power to review decision of lower court, then decision of lower court becomes the decision of the highest court within meaning of this section giving United States Supreme Court power to review final judgments by highest court of state in which a decision could be had. U.S. ex rel. Carrono v. Richmond, D.C.Conn.1959, 177 F.Supp. 504, affirmed 279 F.2d 170.

- - -

UNITED STATES ex rel. James CARRONO
v.
Mark S. RICHMOND, Warden Connecticut State Prison.
Civ. A. No. 7885.
United States District Court
D. Connecticut.
July 31, 1959.

U S C A
28 § 1251 to § 1331
Judiciary and Judicial Procedure
KF 65 U3
Jurisdiction and Venue

merits. American Railway Express Co. v. Levee, 1923, 263 U.S. 19, 44 S.Ct. 11, 68 L.Ed. 140. In that case the petitioner had received an adverse decision in a civil case in a Louisiana trial court; an appeal to an intermediate appellate court, the Court of Appeal, brought an affirmance. The Supreme Court of Louisiana refused to issue a writ of certiorari to bring up the case for review "for the reason that the judgment is correct." Mr. Justice Holmes stated that the United States Supreme Court's writ of certiorari was properly addressed to the Court of Appeal rather than the Supreme Court of Louisiana. Although it was necessary for petitioner to invoke the jurisdiction of the Supreme Court of Louisiana, nevertheless, when it was declined, the Court of Appeal was shown to be "the highest court of the State in which a decision could be had." Accordingly, review of the intermediate court's judgment by the Supreme Court of the United States was permitted under the then existing statute, a predecessor of Section 1257. In Virginian Railway Co. v. Mullens, 1926, 271 U.S. 220, 46 S.Ct. 525, 70 L.Ed. 915, a civil action in tort, the judgment of a trial court was reviewed by the Supreme Court of the United States on writ of certiorari, the state's Supreme Court of Appeals having previously declined to review the judgment of the trial court. Similar treatment of an appeal rather than review on certiorari was afforded by the Court as recently as 1954. Michigan-Wisconsin Pipe Line Co. v. Calvert, 1954, 347 U.S. 157, 74 S.Ct. 396, 98 L.Ed. 583.

APPENDIX I - SUPREME COURT OF THE UNITED STATES
Office of the Clerks Washington D.C. 20543-001
William Suter's August 4, 1999 Letter to Dennis Balanay

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC20543-0001

WILLIAM K. SUTER
CLERK OF THE COURT

August 4, 1999

AREA CODE 202
479-3011

Dennis Balanay
P.O. Box 357
Haleiwa, HI 96712

RE: Dennis Balanay v. Hawaii

Dear Mr. Balanay:

The above-entitled petition for a writ of certiorari was postmarked July 30, 1999 and received August 2, 1999. The papers are returned for the following reason(s):

Your case must first be reviewed by a United States court of appeals or by the highest state court in which a decision could be had. 28USC 1254 and 1257.

Had the petition been properly filed it would be necessary for you to correct it. The questions presented for review must appear on the first page immediately following the cover of the petition. The petition must be followed by an appendix containing the documents required by Rule 14. The appendix must be on paper which is 5 1/8 by 9 1/4 inch paper, and must comply with the printing requirements of Rule 33. No proof of service was received. Rule 29

Also returned is money order number 83551498255, dated July 30, 1999, in the amount of $300.

Sincerely,
William K. Suter, Clerk
By: "se/_____"

Ruth Jones
(202) 47903022

Enclosures

APPENDIX J - SUPREME COURT OF THE UNITED STATES
Office of the Clerks Washington D.C. 20543-001
William Suter's October 19, 1999 Return Letter to
Petitioner Dennis Balanay

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

WILLIAM K. SUTER
CLERK OF THE COURT

October 19, 1999

AREA CODE 202
479-3011

Dennis Balanay
P.O. Box 357
Haleiwa, HI 96712

RE: Dennis Balanay v. Hawaii

Dear Mr. Balanay:

Your purported petition for a writ of certiorari was received again October 6, 1999, and is returned together with your money order in the amount of $300.

You have not included in the appendix to the petition any order or opinion of the Supreme Court of Hawaii as this office requested by letter dated August 4, 1999. Until and unless you include a appendix to the petition as required by Rule 14, and present a petition that is prepared in compliance with Rule 14 it is not possible for this office to file the petition.

Enclosed is a sample petition that you may follow as to form only.

Sincerely,
William K. Suter, Clerk
By: "se/_____"

Francis J. Lorson
(202) 479-3024

Enclosures

APPENDIX K - SUPREME COURT OF THE UNITED STATES
Office of the Clerks Washington D.C. 20543-001
William Suter's November 9 , 1999 Return Letter to
Petitioner Dennis Balanay

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

November 9, 1999

WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202
479-3011

Dennis Balanay
P.O. Box 357
Haleiwa, HI 96712

RE: Dennis Balanay v. Hawaii

Dear Mr. Balanay:

Your purported petition for a writ of certiorari was recieved again November 8, 1999 and must be returned for failure to include the orders and opinions of the Supreme Court of Hawaii as requested in prior letters from this office. Appendix A contains only the order of the Intermediate Court of Appeals of Hawaii denying a motion for reconsideration.

Your money order in the amount of $300 is returned as well.

Sincerely,
William K. Suter, Clerk
By:

Francis J. Lorson
(202) 479-3024

APPENDIX L - SUPREME COURT OF THE UNITED STATES

Office of the Clerks Washington D.C. 20543-001
William Suter's January 12, 2000 Return Letter to
Petitioner Dennis Balanay

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

January 12, 2000

WILLIAM K. SUTER
AREA CODE 202
CLERK OF THE COURT

479-3011

Dennis Balanay
P.O. Box 357
Haleiwa, HI 96712

RE: Dennis Balanay v. Hawaii

Dear Mr. Balanay:

Your purported petition for a writ of certiorari was recieved again January 11, 2000 and must be returned since you still have not included copies of the orders and opinions of the Supreme Court of Hawaii. Absent these opinions and orders, it is not possible to determine whether your petition can be filed or not.

Your attention is directed to prior letters from this office.

Your postal money order in the amount of $300 is returned.

Sincerely,
William K. Suter, Clerk
By:

Francis J. Lorson
(202) 479-3024

Enclosures
cc: Andrea-T.Y. Low

APPENDIX M - SUPREME COURT OF THE UNITED STATES
Office of the Clerks Washington D.C. 20543-001
William Suter's March 15, 2000 Return Letter to
Petitioner Dennis Balanay

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

March 15, 2000

WILLIAM K. SUTER
AREA CODE 202
CLERK OF THE COURT 479-3011

Dennis Balanay
P.O. Box 357
Haleiwa, HI 96712

RE: Dennis Balanay v. Hawaii

Dear Mr. Balanay:

Your petition and appendix in the above-entitled case were received again March 13, 2000, and must be returned since you still have not reproduced in the appendix the May 24, 1999, order of the Supreme Court of Hawaii which is required by Rule 14 of the Rules of this Court.

The type size is too small. The type must comply with Rule 33.1 in all respects. Items in the petition and in the appendix must be in the order proscribed by Rule 14. The name of the Prosecuting Attourney must be removed from the cover of the petition.

Forty corrected copies of this petition must be received in this office within 60 days of the date of this letter in order for this petition to be filed timely. See Rule 14.5 of the Rules of the Court.

Sincerely,
William K. Suter, Clerk
By:

Francis J. Lorson
(202) 479-3024

Enclosures
cc: Andrea T.Y. Low

Acknowledgment

This joint appendix for the petition for writ of certiorari will be signed by the petitioner Dennis Balanay on this date of **May, 2000**

Signed by Dennis Balanay — On this date May 12, 2000

Respectfully Submitted
PRO, SE
Dennis Balanay
P.O. Box 357
Haleiwa, Hawaii 96712
Telephone: 637-9254
(Petitioner)